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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MARGARET HAMMOND et al.,

Plaintiffs and Respondents,

v.

PAMELA HUDSON, as Trustee,
etc.,

Defendant and Appellant.

A155796

(Mendocino County
Super. Ct. No. SCUKCVPB
16-26644)

Appellant Pamela Hudson was trustee of a trust established for her mother Alice Gillespie's benefit. Pamela¹ and her two siblings, respondents Daniel Johnson and Margaret Hammond, were remainder beneficiaries. No funds remained in the trust account after Alice's death and Pamela refused to give Daniel and Margaret an accounting. Daniel and Margaret filed the instant action against Pamela, and the trial court issued a judgment removing Pamela as trustee and requiring her to return \$1,400,564.86 to the trust and provide an accounting to her siblings for the time that she administered the trust. We affirm.

¹ We use the parties' first names not from disrespect, but to ease the reader's task.

I. BACKGROUND

Alice was the daughter of Raymond and Blanche Stansbury, who owned a Buick dealership in Southern California. Alice had three children: Daniel, Margaret and Pamela.

Concerned about Alice's ability to handle finances, Raymond and Blanche created The Stansbury Family Trust (Stansbury Trust) in 1978, and that instrument was amended in 1982. The Stansbury Trust provided that upon the death of the surviving trustor, money and property would pass to Alice and to her then-living children in equal shares. According to Article II(c)(3), Alice's share was to be held in trust for her during her lifetime, with a separate sub-trust established, and would then pass to her then-living children in equal shares: "The ALICE W. GILLESPIE TRUST. (a) The Trustee shall pay to or apply for the benefit of the Trustors' daughter, ALICE W. GILLESPIE, during her lifetime, in monthly or other convenient installments, all of the net income from her separate trust. (b) If the payments from said daughter's share should be insufficient in the discretion of the Trustee, considering her income or other resources, outside of this trust, to provide for her reasonable maintenance, the Trustee may pay to or apply for her benefit so much of the principal of her separate trust as the Trustee may deem proper or necessary for such a purpose. This provision shall be liberally construed in the interest of and for the benefit of said daughter. (c) Upon the death of said daughter, the remainder of her Trust Estate shall be distributed to her then living issue on the principle of representation."

Blanche died in 1985 and Raymond, the surviving trustor, died in 1999. At that time, the trust property consisted of some investment and cash accounts held with Citizen's Business Bank (CBB) and a piece of commercial

real property located on 17th Street in Costa Mesa, California. CBB was appointed the original trustee, and began administering the trust. It distributed trust assets in equal one-quarter shares, one for Alice, one for Daniel, one for Margaret and one for Pamela. At that time, because Alice's children were each over the age of 25, they elected to take their cash distributions outright as was allowed under the terms of the trust. They received one-quarter of the cash outright (about \$255,000) along with a one-quarter share of the Costa Mesa real property.

Alice received her one-quarter share in trust, and title to the 17th Street Property for her share was taken as "Citizen's Business Bank, Trustee of the Stansbury Family Trust established October 17, 1978, **for the benefit of Alice W. Gillespie.**" Her one-quarter share of the cash and investment accounts were held by CBB for administration. Alice was also employed as a teacher and had income from other sources. Not all of her property was trust property.

The 17th Street property consisted of land on which a "ground lease" had been given to a third party: i.e., Daniel, Margaret, Pamela and Alice's sub-trust owned the land but not the building, which was owned instead by the lessee. In approximately 2003, Pamela became aware that the lessee had assigned the ground lease to a different entity without the consent of the lessors as the lease required, and even though the assignee continued to pay rent, she wanted to file litigation. Her siblings agreed to file suit given Pamela's strong beliefs about the situation, but CBB, as trustee of Alice's one-quarter ownership interest, did not want to participate. It resigned as trustee for Alice's share of the trust and Pamela became the successor trustee.

Litigation proceeded regarding the unauthorized sublease on the 17th Street Property. A settlement of the case required the siblings and trust to buy the building on the property from the lessee. The parties took out a loan to buy the building, and Daniel managed the property and disbursed the rents. The property was sold in 2006 for \$4,225,000, with each owner (Daniel, Margaret, Pamela and Alice's trust) receiving a one-quarter share of the net sales proceeds (\$587,074.76). Alice's share was placed in a trust account at LPL Financial (Acct. No. ending in *4812), on which Pamela was on title as trustee.

There were four accounts at the Savings Bank of Mendocino to which Pamela was on title: *2016 in the names of Pamela and Alice, *6288 in the names of Pamela, her husband Thomas Hudson, and Alice, *1067 in the names of Pamela and Thomas, and *8617 in the names of Pamela and Thomas. Over the years, appellant transferred trust assets from the LPL account into *2016 and *6288, and ultimately into *8617 and *1067. Pamela used trust assets to pay her own bills and personal expenses, and she withdrew \$97,712.67 after Alice's death to pay off a personal loan and lien. While serving as trustee, Pamela used a power of attorney to sign a quitclaim deed which transferred Alice's home to Pamela, even though the power of attorney only went into effect when certifications of incapacity were obtained for Alice and no certifications had been obtained.

Alice died in September 2014. Pamela continued to serve as trustee over Alice's share of the trust until Alice's death. During that time, Pamela never read a copy of the trust documents and never provided an accounting to anyone; it was not until Alice had died that Pamela read the trust documents.

Pamela was close to Alice and very involved in her day-to-day life. They both originally lived in Southern California, but when Pamela moved to Mendocino in 2005, Alice moved there, too.² At the time of her death, Alice had a reverse mortgage on which she lived. She had medical conditions that required professional caregivers, and trust assets were used to pay for those caregivers' services.

In or around July 2014, Margaret saw a financial statement for LPL Financial showing that the account had over \$200,000 at the beginning of June 2014 but had been reduced to zero by the end of that month. After Alice's death, Daniel and Margaret made several requests to Pamela to provide an accounting. (See Prob. Code, § 17200, subd. (b.)) Pamela promised several times to do so. After Daniel and Margaret retained an attorney, who contacted counsel for Pamela, Pamela's attorney stated in an email that there was \$127,000 left in the trust and Pamela was willing to mail Daniel and Margaret \$42,500 each. This amount was never provided.

In August of 2015, an attorney representing Pamela sent Daniel and Margaret a copy of account statements from the trust, accompanied by a letter stating that trust assets had been co-mingled with Alice's personal assets, that Pamela had received money from her mother and had paid some of her expenses, and that they had hired a bookkeeper to trace the funds in the various accounts and there was a negative balance; consequently, there were no trust funds for disbursement. Daniel and Margaret were never provided with an explanation of the trust account transactions.

In March 2016, counsel for Pamela sent a letter stating that Alice had been a beneficiary of the Stansbury Trust, that her share remained in trust, that she was entitled to liberal distribution of both interest and principal

² Daniel lived in Southern California and Margaret lived in England.

during her lifetime, that her then-living issue were entitled to trust assets that remained after her death, and that Daniel and Margaret were not entitled to an accounting as remainder beneficiaries. The letter indicated that it would be unreasonable and unduly burdensome for Pamela to reconstruct the accounts, and she did not have a duty to do so.

Daniel and Margaret filed the current action against Pamela on June 24, 2016. An amended petition filed May 12, 2017 sought: (1) an order compelling Pamela to provide an accounting; (2) damages based on her breach of trust; (3) removal of Pamela as trustee; and (4) a surcharge of Pamela as trustee.³

Daniel and Margaret presented the expert testimony of Stacy Kinsel, a certified public accountant who was certified in financial forensics and as a fraud examiner. Kinsel concluded that under the terms of the trust, Alice was entitled to the income without restriction, but was to be given only that principal which was necessary for her maintenance. While Kinsel could not say that the disputed transactions were made for an improper purpose under this standard, she could not say that they were made for a proper purpose because she did not have personal knowledge of the transactions and she had not been provided with sufficient information regarding their purpose.

³ The petition was amended because Pamela had taken the position during litigation on the original petition that no sub-trust was actually created or funded for Alice when Raymond died, and that she consequently was not trustee of that nonexistent trust and did not owe Daniel and Margaret a fiduciary duty. The amended petition was intended to avoid an interpretation of the claims as involving breaches of duty concerning the sub-trust alone, instead alleging that Pamela breached her duties as trustee of the Stansbury Trust. The validity of the amendment to the petition, and the sufficiency of the evidence that Pamela owed a fiduciary duty to respondents as remainder beneficiaries, is not at issue on appeal. (*Esslinger v. Cummins* (2006) 144 Cal.App.4th 517, 523-528 (*Esslinger*).)

Pamela had not provided Kinsel with an accounting or with other information showing how the funds were used. Kinsel traced the funds in the various accounts with which Pamela was affiliated, and identified a total of \$723,778.61 in potentially improper trust distributions.⁴

Pamela's position at trial was that the money in dispute was first paid to Alice, at which point it became hers to do with what she wanted. She claimed to have used the money to pay for Alice's medical and related expenses, but did not present documentation of the same.

The court found in favor of Daniel and Margaret, concluding Pamela had breached her fiduciary duty to them as remainder beneficiaries by failing to provide an accounting. It removed her as trustee and ordered that Daniel be successor trustee for the purpose of winding down the trust. The court concluded that as trustee, Pamela had the burden of proving the transactions were for expenses incurred for the benefit of the trust. By failing to provide any documentary evidence in support of the trust distributions, Pamela had failed to carry this burden, and was assessed damages totaling \$1,400,564.86 (\$723,778.61 in improper distributions, \$151,897.91 in lost profits, and \$524,888.34 in interest). She was ordered to pay one-third this amount (\$466,854.96 and \$466,854.95) directly to both Margaret and Daniel and to pay her own one-third share to the successor trustee, to be held pending an award of attorney fees and costs. The court expressly found that Pamela was not a credible witness and had committed perjury in this case when she

⁴ This consisted of a total of \$413,778.61 that was transferred from the LPL trust account *4812 to account *2016 (held in the names of Alice and Pamela), \$300,000 from the LPL trust account *4812 to account *6288 (held in the names of Alice, Pamela and Thomas) and \$10,000 to an entity known as Fields of Gold, controlled by Pamela.

submitted discovery responses denying that Daniel and Margaret were trust beneficiaries after she knew them to be so.

“The Trust terms required [Pamela] to pay to Alice or apply for Alice’s benefit all net income, and if such payments are insufficient in the discretion of the Trustee, considering Alice’s income or other resources outside of this trust, principal as the Trustee deems proper or necessary to provide for Alice’s reasonable maintenance. . . . [Pamela] offered no evidence to show that these distributed funds were income distributions or actually used to pay expenses incurred for Alice’s reasonable maintenance.”

II. DISCUSSION

A. Statement of Decision

After the court trial in this case was completed, the court issued a 24-page tentative statement of decision (TSOD) on July 18, 2018, which was organized into four subsections: (1) the factual and procedural history of the case; (2) the court’s findings of fact; (3) the court’s conclusions of law; and (4) the court’s orders. The TSOD discussed the evidence in great detail, made specific findings as to witness credibility, and described the factual basis for finding that Pamela had breached her duty to administer her mother’s trust according to its express terms.

On July 27, 2018, Pamela filed a document entitled “Respondent Pamela Hudson’s Request to the Court to Address Principal Controverted Issues and Her Objections to the Court’s July 19, 2018 Tentative Decision After Trial as to Pamela Hudson’s Request for a Statement of Decision (Cal. Rules of Court, rule 3.1590(d) and (g).)” It listed a number of issues alleged to have been omitted from the TSOD, including unexplained transactions, self-dealing, failure to keep trust property separate, failure to send statutory notice, failure to communicate, failure to account or report, failure to

distribute per the trust instrument, failure to diversify and make trust instruments productive, standing and the statute of limitations. As to the statute of limitations issue, the objection to the TSOD stated, “Under Probate Code [section] 16460, the statute of limitations is three (3) years and under C[ode of Civil Procedure section] 343, the statute of limitations is four (4) years. As such, Petitioner’s claims could only address LPL Trust account assets from June 23, 2012 onward in their amended petition.” The court issued a Final Statement of Decision (FSOD) on August 16, 2018, which, with the exception of one minor issue, was the same as the TSOD.

Code of Civil Procedure section 632 provides in relevant part, “The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at trial. The request must be made within 10 days after the court announces a tentative decision. . . . The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision.” Pamela contends the FOSD was defective because the trial court ignored her request that it address various material controverted issues. She further argues that this deficiency requires reversal of the judgment. We disagree.

“ ‘In rendering a statement of decision under Code of Civil Procedure section 632, a trial court is required only to state ultimate rather than evidentiary facts; only when it fails to make findings on a material issue which would fairly disclose the trial court’s determination would reversible error result. [Citations.] Even then, if the judgment is otherwise supported, the omission to make such findings is harmless error unless the evidence is sufficient to sustain a finding in the complaining party’s favor which would have the effect of countervailing or destroying other findings. [Citation.] A

failure to find on an immaterial issue is not error. [Citations.] The trial court need not discuss each question listed in a party's request; all that is required is an explanation of the factual and legal basis for the court's decision regarding the principal controverted issues at trial as are listed in the request." (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

Here, the trial court's FSOD clearly stated the legal and factual bases for its decision. Although Pamela claimed in her objections to the TSOD that the court had failed to address several material points, these matters were already addressed in the TSOD and later in the FSOD. Although different judges might have taken a different view of the evidence, no one reading the FSOD would have any confusion as to why the court reached the result it did.

The only issue raised by Pamela that arguably should have been addressed by the FSOD but was not, was her statute of limitations defense. But this omission does not require reversal unless a finding in Pamela's favor on this point was supported by substantial evidence. (*Hellman, supra*, 6 Cal.App.4th at p. 1229.) As we explain, we conclude that no substantial evidence supported the statute of limitations defense, and that any error in failing to discuss it in the FSOD was harmless.

"With respect to trust accounts, Probate Code section 16460 applies to a fiduciary's duty to provide an accounting to a beneficiary and provides a three-year limitations period that is triggered by the trustee's accounting duty. A beneficiary of a trust who receives an accounting that would put him or her on notice of a claim against the trustee has three years from the date of receipt of the accounting to file an action; *if no accounting is provided, any action must be filed within three years of the discovery of the claim*. Under Probate Code section 16460, the duty of inquiry is triggered where there is

sufficient information (either through an accounting or otherwise) to put the beneficiary on notice to take action.” (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1123, italics added.)

Pamela did not provide Daniel and Margaret with an accounting, so the three-year period of Probate Code section 16460 accrued only after “the receipt of information sufficient to permit discovery of a claim.” (*Noggle v. Bank of America* (1999) 70 Cal.App.4th 853, 860 (*Noggle*).) Alice died September 23, 2014, and a request for an accounting was made by Daniel and Margaret shortly after her death. Pamela originally agreed to provide the requested accounting, but then reneged on her promise. Before they were told by Pamela in March 2016 that she would not provide them with an accounting, Daniel and Margaret did not receive any information that would have put them on notice that Pamela was not doing her duty as trustee; therefore it was not until Pamela unequivocally refused to provide an accounting in March 2016 that the causes of action accrued. The original petition was filed in this case on June 24, 2016, only a few months after Pamela refused to provide the requested accounting and less than two years after Alice’s death.

Pamela suggests it was a factual question as to when the claim for breach of fiduciary duties accrued. She notes that Daniel and Margaret “were aware of at least one large withdrawal from the LPL Investment Account made shortly before Alice Gillespie’s death.” She is apparently referring to testimony that in July of 2014, Margaret saw on the June 2014 statement that there had been a withdrawal in excess of \$200,000 and told Daniel about the same. Assuming this withdrawal would have been enough to put a reasonable person on inquiry, Margaret learned of it about two years

before the original petition was filed, and it does not implicate the statute of limitations.

Pamela also argues the evidence supported a finding that Daniel and Margaret were on notice of facts supporting a breach by Pamela in the early 2000's, when they received their final distribution of the sales proceeds from the 17th Street property. She points out that Daniel had been managing that property, and had deposited Alice's share of the rents to her directly on the instruction of Pamela as trustee. She argues: "Respondents were aware of Stansbury Trust expenditures made on their mother's behalf during her lifetime. . . and they neither requested nor received accountings or other information." But as remainder beneficiaries who were not currently entitled to Alice's share of the proceeds, they were not entitled to annual accountings without a request, so Pamela's failure to provide the same did not itself put them on notice of a breach of her duties. (See *Esslinger, supra*, 144 Cal.App.4th at pp. 523–528.) At most, if there were facts giving rise to a suspicion that Pamela was breaching her duties as trustee, Daniel and Margaret would have had standing to petition the court to order an accounting. (*Ibid.*) But Pamela has pointed to no such facts that would arguably have provided grounds to request an accounting or put a reasonable person on notice that a breach had occurred.

The evidence did not support a finding that the claims of Daniel and Margaret were barred under the three-year limitations period of Probate Code section 16460.⁵ Consequently, the FSOD's failure to discuss the statute of limitations does not require a remand.

⁵ Although the parties have assumed in their briefs that this case is governed by the four-year limitations period for breach of fiduciary duty under Code of Civil Procedure section 343, at oral argument counsel for

B. *Court's Jurisdiction in Civil Trial/Pleadings*

In a somewhat perplexing argument, Pamela claims that the court made findings outside the scope of the pleadings. She acknowledges the amended petition alleged she had committed a breach of trust, that she owed an accounting to Daniel and Margaret and that she should be removed as trustee. She claims the court “strayed far from the pleadings” in finding an intentional breach of fiduciary duty when there were no claims of intentional wrongdoing within the amended petition and that the judgment is “void on its face” because it “exceeds the issues actually litigated.” She also contends the court made findings against her on uncharged civil offenses when it concluded she had committed perjury and misrepresentation. None of these arguments requires a reversal of the judgment.

The judgment states Pamela “intentionally and in bad faith breached her fiduciary duties as Trustee of the Trust.” This finding was responsive to the causes of action in the amended petition for breach of trust and removal of the trustee. The finding that such breaches were intentional and in bad faith simply reflects the trustee’s state of mind in committing breaches of her duties. Whether Pamela acted intentionally or committed any misrepresentations was squarely before the court.

Pamela argues the case is akin to *Wallace v. Otis* (1941) 47 Cal.App.2d 814, 817, in which the plaintiff pled only fraud and tried the case on that theory, but obtained a favorable judgment after the court found trespass.

appellant noted that the applicable statute of limitations for an action against a trustee was the three-year period under Probate Code section 16640. (*Noggle, supra*, 70 Cal.4th at p. 859 [“ ‘The three-year statute of limitations under subdivision (a) is applicable to all claims for breach of trust and the four-year statute of Code of Civil Procedure section 343 is inapplicable’ ”].) Whether a three-year or four-year limitations period is applied in this case, the result remains the same.

The appellate court found the judgment to be void, because there was no indication it was based on issues that were ever litigated. (*Id.* at p. 817.) The judgment in this case was based on findings that Pamela had breached her duties as trustee, as pled in the amended petition. That she was found to have done so intentionally and in bad faith does not change the nature of the issues tried.

Pamela argues the court did not give her fair warning in finding she had committed perjury by intentionally submitting documents during the litigation stating under penalty of perjury that Daniel and Margaret were not beneficiaries when in fact she knew them to be beneficiaries. (See *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 761, fn. 18 [synthesizing cases imposing terminating sanctions for committing perjury during discovery].)⁶ The factual finding that Pamela committed perjury did not render the judgment void when the judgment imparted no liability on Pamela on this basis. Pamela was surcharged, ordered to prepare an accounting, and removed as trustee because she was found to have breached her duties as trustee; whether or not she committed perjury in this action

⁶ Pamela learned from her attorney in February 2015 that the siblings were remainder beneficiaries of the trust who were entitled to Alice's share upon her death. She nonetheless filed responses to the petition in 2016 and the amended petition in 2017 under penalty of perjury denying the fact that Margaret and Daniel were beneficiaries entitled to an accounting. She also filed a motion to bifurcate the adjudication of her duty to provide an accounting, and used this pending motion to object to providing financial information in response to form interrogatories, special interrogatories, requests for admission, and a request for production of documents, on the ground that the trust did not have beneficiaries who were owed an accounting. She also filed a motion to quash and request for a protective order (which were denied) opposing the production of financial documents on the ground that Margaret and Daniel's entitlement to those documents had not yet been established.

was relevant to her credibility as a witness but was not an independent basis for liability.

C. *Burden of Proof*

Pamela argues the trial court committed an error of law when it ruled that as trustee, she was the party who bore the burden of proof that the distributions out of the trust were proper. She also argues she was prejudiced because the court changed the burden of proof after the close of evidence and consequently, she did not put on the evidence necessary to show the propriety of the disputed transactions. We are not persuaded.

Among the duties a trustee owes to the beneficiaries of a trust are the duty of loyalty, the duty to avoid conflicts of interest, the duty to preserve trust property, the duty to make trust property productive, the duty to dispose of improper investments, and the duty to report and account. (*Pierce v. Lyman* (1991) 1 Cal.App.4th 1093, 1102–1103.) Once a beneficiary objects to the trustee’s accounts, the burden shifts to the trustee to produce evidence justifying the accounts. (*Purdy v. Johnson* (1917) 174 Cal. 521, 527–530 (*Purdy*); *Estate of McCabe* (1950) 98 Cal.App.2d 503, 505 (*McCabe*).)

“Trustees are under an obligation to render to their beneficiaries a full account of all their dealings with the trust fund [citations], and where there has been a negligent failure to keep true accounts, or a refusal to account, all presumptions will be against the trustee upon a settlement.” (*Purdy* at p. 527.) Moreover, “A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee’s influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee’s fiduciary duties. This presumption is a presumption affecting the burden of proof.” (Prob. Code, § 16004, subd. (c).)

Here, it is undisputed that Daniel and Margaret are beneficiaries to whom Pamela owed a fiduciary duty, and it is also undisputed she did not provide them with an accounting that was required as part of her duties as trustee. Having breached this duty, it was appropriate for the court to shift the burden of proof to Pamela to provide evidence justifying her transactions using trust property. Additionally, to the extent Pamela deposited money into her personal accounts, the presumption of Probate Code section 16004, subdivision (c) was triggered.

Appellant cites *Neel v. Barnard* (1944) 24 Cal.2d 406, 419-420 (*Neel*), for the proposition that beneficiaries, not the trustee, should have the burden of proof. *Neel* does not support appellant's argument. It did not involve the failure of the trustee to provide adequate accounts, as here. *Neel* considered which party bore the burden of proof as to whether the trustee allegedly breached his duties by not selling certain property of the trust. The Supreme Court explained that the plaintiffs' argument in that case was not "directed at the proceedings on the account so stated and does not involve the claim that evidence is lacking to support the findings as to the items included by the court in its account." (*Id.* at p. 420.) It was careful to point out that a trustee *does*, by contrast, bear the burden of proof as to approval of his accounts: "On an accounting for a trust, the trustee does have a burden to establish the correctness of his accounts. . . ." (*Neel, supra*, 24 Cal. 2d at p. 420.) Because the present appeal concerns the approval or settlement of the trustee's accounts, the foregoing principle applies and Pamela, as trustee, had the burden of proving her accounts. (*Ibid.*; accord, *Purdy, supra*, 174 Cal. at pp. 527-530.)

The *Neel* court quoted from *Purdy, supra*, 174 Cal. 521, an action against trustees for an accounting. The trustees in *Purdy* presented an

account to the court, were cross-examined by the plaintiffs in the action, but produced no evidence in support of the accounting. The court noted: “The entire trial was conducted upon the erroneous theory that the burden of proof was upon the beneficiary to point out the particulars in which the account was erroneous, and that she was bound to go forward and establish affirmatively the impropriety of the charges and credits which she assailed. Such is not the law.” (*Id.* at p. 527.) The *Purdy* court reiterated that “it is the duty of the trustees to support every item of their account, and that wherever they fail to support the correctness of a charge or a credit by satisfactory evidence, the item must be disallowed.” (*Purdy, supra*, 174 Cal. at p. 531, quoted in *Neel, supra*, 24 Cal.2d at p. 420.) The Supreme Court in *Neel* distinguished *Purdy* and held that the defendant had satisfied his burden of supporting his accounts, but he was not required to anticipate and defend against charges of dereliction of duty and malfeasance “which do not arise from anything on the face of his accounts but are grounded on other matters.” (*Neel, supra*, 24 Cal.2d at p. 420.)

The trial court did not err by concluding in its statement of decision that Pamela had the burden of proof—it would have been error to place the burden on Daniel and Margaret, as beneficiaries, to show that the transactions were unauthorized under the terms of the trust. Trustees must “prove every item of their account by ‘satisfactory evidence’; the burden of proof is on them and not on the beneficiary; and any doubt arising from their failure to keep proper records, or from the nature of the proof they produce, must be resolved against them.” (*McCabe, supra*, 98 Cal.App.2d at p. 505.) This is not a case, like *Neel*, where the alleged dereliction of duty involved matters not directed at the accounts (or the lack thereof).

Pamela argues the burden which the court imposed was contrary to its remarks pretrial and that by changing its position after the close of evidence, it precluded her from putting on evidence sufficient to meet her burden of proving the transactions satisfied the purpose of the trust. We disagree.

The beneficiary of the trust has the initial burden of proving the existence of a fiduciary duty and the trustee's failure to perform it; the burden then shifts to the trustee to justify its actions. (*LaMonte v. Sanwa Bank California* (1996) 45 Cal.App.4th 509, 517, citing *Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 853.) When the court granted Daniel and Margaret's request to file an amended petition, it noted, "I mean, I agree[] with you that the case as originally framed was as to the trust that never was created. But I think that there's been—you know, I think counsel now has really addressed those issues in this proposed amended petition. So the case has expanded. No question about that. *Again, its something that they have to prove. It will be their burden.* But I'm going to allow them to move forward in this way." (Italics added.)

The remarks were not a ruling on the burden of proof on which Pamela was entitled to rely at trial, but were made in passing by the court when it ruled on a motion on a different topic altogether. In any event, the court's remarks were not inconsistent with placing an initial burden on Daniel and Margaret to prove a fiduciary relationship and breach, which they did. The burden then shifted to Pamela to justify the trust transactions.

Pamela suggests she was somehow deterred from putting on evidence that would have proven the legitimacy of the transactions. This argument requires an assumption she would have litigated the case more vigorously if she had understood she had the burden of proving the nature of the trust transactions. But, as we have already noted, there was nothing inconsistent

with the trial court's comments during its pretrial ruling and its shifting the burden to Pamela after a fiduciary relationship and breach of trust were established. Pamela was represented by counsel during this trial, who was charged with knowing the law concerning the burden of proof. Pamela testified, and was unable to provide an explanation for the disputed transactions but the court did not prevent her from putting on any evidence and it is pure speculation to think she possessed additional information about the trust transactions that she did not present at trial because she believed Daniel and Margaret to have the burden of proof.⁷

D. Statute of Limitation

Pamela claims the trial court should have limited her liability for breaches of her fiduciary duty to transactions that occurred after June 24, 2012, because the original petition (to which the amended petition related back) was filed on June 24, 2016, and Code of Civil Procedure section 343 establishes a residual four-year statute of limitations for breach of fiduciary duty. (See *Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 606.) As we have already discussed in section A of this discussion, the three-year statute of Probate Code section 16460 applies. (*Noggle, supra*, 70 Cal.App.4th at p. 859.) But this does not assist Pamela, because the causes of action asserted in this case did not accrue until she refused to provide an

⁷ Appellant filed a request for judicial notice on February 5, 2020, asking us to take judicial notice of the Motion for Order Granting Temporary Claim for Purposes of Voting on Debtor's Plan (Motion), submitted by Daniel and Margaret in a Chapter 11 bankruptcy proceeding filed by Pamela (and since dismissed). (Evid. Code, § 452, subd. (d), 459, subd. (a).) She argues that because Daniel and Margaret characterized the judgment in this case as the "fraud judgment" within this bankruptcy court filing, this shows they bore the burden of proof in the instant case because the judgment "sounded in fraud." Although the records of other courts are a proper subject of judicial notice, we deny the request as irrelevant to any issue on appeal.

accounting, which occurred in early 2016. Viewed generously, there might be some evidence that would have placed Daniel and Margaret on notice of their claim when they learned of a bank statement showing that \$200,000 had been spent back in July of 2014. But the petition was filed well-within three years of this date. Pamela has articulated no facts that would support her argument that the causes of action accrued at an earlier point in time.

III. DISPOSITION

The judgment is affirmed. Costs to petitioners and respondents.

NEEDHAM, J.

We concur.

JONES, P.J.

BURNS, J.

Hammond v. Hudson / A155796